

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of California Shortline Railroad Association, et al. for an Order Regarding Application of General Order 26 to 13' Track Centers at Military and Former Military Bases.

Application 01-11-040
(Filed December 24, 2001)

Petition of THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY for a Commission Order Instituting Rulemaking to Adopt, Amend or Repeal a Regulation Pursuant to California Public Utilities Code § 1708.5 for the Purpose of Amending Section 7.4 of General Order No. 26-D which governs Clearances on Railroads and Street Railroads with Reference to Side and Overhead Structures, Parallel Tracks, Crossings of Public Roads, Highways and Streets in the State of California.

Petition 01-11-002
(Filed November 21, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING CONSOLIDATING
PETITION AND APPLICATION AND SETTING
PREHEARING CONFERENCE**

Background

On November 1, 2001, the Burlington Northern and Santa Fe Railway Company (BNSF) filed Petition 01-11-002 seeking a Commission Order opening a Rulemaking proceeding to consider amending General Order (G.O.) 26-D, Section 7.4. BNSF contended that the advent of diesel locomotives obviated the need for excess width cars to be placed at least five cars behind the locomotive and caboose as is required by Section 7.4.

The United Transportation Union (UTC) protested the BNSF petition on November 21, 2001. UTC stated that BNSF's requested modifications to Section 7.4 would have an adverse impact on its membership. UTC sought hearings on the petition.

On November 26, 2001, the California Shortline Railroad Association filed an application seeking a commission determination of whether former federal enclaves fall within the provisions of G.O. 26, Section 5.5.

The Commission's Rail Safety and Carriers Division (RSCD) protested the application and asked that it be consolidated with the petition as both proceedings relate to G.O. 26-D, and both proceedings can be addressed through notice and comment rulemaking.

Consolidation

Rule 55 of the Commission's Rules of Practice and Procedure allows consolidation of proceedings with common questions of fact or law. Here, as pointed out by RCSD, both the petition and application raise a common question of law, i.e., the applicability of G.O. 26-D. Therefore, the proceedings will be consolidated for the purposes of any hearings. The two proceedings are subject to different time limitations, compare Pub. Util. Code § 1708.5 (b)(1) (Commission must act on petition for rulemaking within 6 months) and § 1701.4 (no formal time limit on rulemaking proceedings). This difference may result in the proceedings being resolved in separate decisions.

Prehearing Conference

A prehearing conference is scheduled for:

**Monday, February 4, 2002
2:00 p.m.
Commission Hearing Rooms
505 Van Ness Ave**

San Francisco, CA

The assigned Commissioner is scheduled to attend the prehearing conference.

Prior to the prehearing conference, the parties are directed to meet and engage in a substantive conference regarding the issues in these consolidated proceedings. The parties shall direct particular attention to considering whether any disputed issues of material fact exist that might require hearings; and, if so, what procedural mechanisms are best suited to efficiently resolve the issues. The parties shall also consider any outstanding legal issues and propose a procedural schedule for resolving those issues.

IT IS SO RULED.

Dated January 14, 2002, at San Francisco, California.

/s/ MARIBETH A. BUSHEY

Maribeth A. Bushey
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Consolidating Petition and Application and Setting Prehearing Conference on all parties of record in this proceeding or their attorneys of record.

Dated January 14, 2002, at San Francisco, California.

/s/ JEANNIE CHANG
Jeannie Chang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

P.01-11-02; A.01-11-040 MAB/jyc